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**MATRIC NO: 18/ LAW01/011**

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**Questions**

1. State clearly the procedure from arraignment to imposition of sentence in a criminal trial in the High Court. Comment on the remedy available to the accused after the imposition of sentence.

2. Comment on the various methods by which civil proceedings may be commenced in the High Court.

1. By way of introduction, in a criminal trial, criminal procedure is used. Criminal procedure is the method for commencing, conducting and concluding criminal proceedings. Criminal cases are tried before the magistrate and High court. This work aims at looking out and explaining the stages of criminal procedure, particularly from arraignment to imposition of sentence at a High Court.

Criminal cases are tried by the state or government but not by a private person. The stages of criminal procedure in a High Court are Indictment or information; which is an accusation of a crime brought by the Attorney General or any of his subordinate officers against an accused for trial in the High court, Proof of evidence; which are the names, addresses and written statements of witnesses the prosecution wishes to call or put in evidence at the trial. Arraignment and plea, Plea of guilty, Plea of not guilty, Prosecution, Submission of ‘no case to answer’, Defence, Closing address, Judgment, Discharge, Finding of guilt and sentence.

**Arraignment and plea**

This is calling an accused person formally before the court by name at the beginning of a criminal trial, to read to him the indictment or information brought against him and ask him whether he pleads guilty or not. It is done by the registrar or any other officer.

An accused person may plead:

1. Autrefois acquit : This means a plea that has been tried for the same offence before and has been acquitted
2. Autrefois convict : means a plea that has been tries and convicted for the same offence on a previous occasion
3. He may stand mute: Means the accused does not say anything.
4. Plea of guilty to a lesser offence: Pleading not guilty to the offence charged but pleads guilty to a lesser offence.
5. He may plead guilty
6. He may not plead guilty

Plea Bargaining is the process of negotiating and agreeing for an accused to plead guilty to a lesser crime in exchange for the dismissal of the serious criminal charge brought against him for a quick disposal of the entire criminal proceedings.

**Prosecution**

In this stage, the counsel for prosecution always opens the criminal proceedings by calling evidence for the prosecution. He calls his witnesses and examines each in chief, and tenders any exhibit they might have.

**Submission of “No Case to Answer”**

At the close of the prosecution, the defence counsel may submit that the prosecution has no produced sufficient evidence or made out prima facie case against the accused and consequently, the accused has no case to answer and therefore the case should not proceed further. The defense counsel makes the submission by addressing the court. The prosecution counsel usually replies. The judge then makes a ruling on the submission.

**Defence**

After the close of the case for the prosecution and the failure of ‘No Case Submission’, if such submission was made, the case for the defence then opens. The accused and his witnesses, if any, are, one after the other, led in evidence-in- chief by the counsel for the defence and are cross examined by the prosecuting counsel and re examined by the counsel for defence as may be necessary.

**Closing Addresses**

After the close of the case for the defence, the counsel for both sides then make closing speeches by addressing the court from their filed written addresses.

**Judgment**

After the closing addresses by the counsel for both sides, the judge fixes the judgment for a date provided that the summary trial, and the court rises in adjournment to enable it deliberate, consider, or evaluate the totality of evidence in the case.

**Discharge**

When the accused person has not been found guilty, on merit, the judge will dismiss the information or charges and accordingly discharge and acquit the accused person provided under the criminal procedure law. The court usually makes orders such as Dismissal Order, Order of discharge of the accused, Order of acquittal and Order of Compensation. On the other hand if the prosecution failed on a technicality, then the court will usually discharge the accused, but not acquit him. This is provided for by virtue of Section **301 and Section 325 of the Criminal Procedure Act 2004.**

**Sentence**

Where the accused is found guilty, before passing sentence an allocutus, plea for mercy or leniency is usually made by the counsel for the defence. The types of sentences court may impose are:

1. Imprisonment: This deals with jailing someone or restrictions put in place on someone to restrict his freedom of movement. This is provided for by virtue of **Section 377** **of the Criminal Procedure Act 2004.**
2. Fine: an amount of money paid by one for breaking the laws or penalty for an offence. This is provided for by virtue of **Section 389** **of the Criminal Procedure Act 2004.**
3. Death sentence: judgment of a court which stipulates an offender should suffer death for an offence committed. This is provided for by virtue of **Section 367 of the Criminal Procedure Act 2004.**
4. Caning: that is flogging someone. This is provided for by virtue of **Section 384** **of the Criminal Procedure Act 2004.**
5. Deportation: This is the expulsion of a non citizen from a country. This is provided for by virtue of **Section 402 of the Criminal Procedure Act 2004.**
6. Binding over order: which is when one is released for any reason and may be bound to keep the peace and be of good behavior for a specified period of time and failure t do so amounts to punishment as prescribed by the court. This is provided for by virtue of **Section 300 Criminal Procedure Act (2004).**
7. Order for detention: it deals with detainment of insane people and those not found guilty by reason of insanity as it is during the pleasure of the president in respect to federal offences or state governor in respect to state offences. This is provided for by virtue of **Section 401 of the Criminal Procedure Act 2004.**
8. Order for disposal of property: this deals with where properties in relation to the offence are confiscated, seized or disposed.
9. Order of costs: This occurs after a person has been found guilty, the court may order him to pay to the prosecutor such reasonable cost in addition to any penalty imposed.
10. Award for damages: Where the courts orders for restoration of such stolen property to the owner and Order for award of damages for such wrongful conversion or detention of property.
11. Probation order: it is a period of time during which an offender must behave well, that is keeps the peace or do community service. A probation Order may be combined with a suspended sentence, fine and a community service. This is provided for by virtue of **Section 435 of the Criminal Procedure Act 2004.**

In the imposition of sentence, there are four broad policies or philosophies behind sentencing. This are policy of retribution; which deals with punishment for a wrong crime, Policy of deterrence; which deals with punishment of offenders severely in order to make the crime unattractive to others who may be criminally minded, Policy of reformation; which helps to rehabilitate and improve the person to make him useful to the society and Policy of reparation; which the criminal compensates the victim.

**Remedy available to the accused person after the imposition of a sentence**

## An individual convicted of a crime may ask that his or her case be reviewed by a higher court. So in order words, the accused can appeal to a higher court of Appeal to entertain the case as one of second instance. If that court finds an error in the case or in the sentence imposed, the court may reverse the conviction or find that the case should be re-tried.

In conclusion, the stages in criminal procedure are put in place to ensure justice and an accused person of a crime is presumed innocent until when proven guilty.

2. By way of introduction, before examining the methods of commencing civil procedure in a High court, one needs to know what civil procedure is. Civil procedure is the body of law that sets out the rules and standards that courts follow when adjudicating civil lawsuit. So in order words, it is the procedure of commencing, conducting and concluding civic proceedings.

The civic procedure rules govern how a lawsuit or case may be commenced, the types of pleadings or statements of case, motions or applications, and orders allowed in civil cases, the timing and manner of depositions and discovery or disclosure, the conduct of trials, the process for judgment, the process for post-trial procedures, various available remedies and how the courts and clerks must function in court.

The Commencement of a civil action is the process taken to institute an action before a competent court to determine the issues between parties. By virtue of **Order 1 Rule 1 of the High Court of the Federal Capital Territory, Abuja (Civil Procedure) Rules**, there are four modes or methods of commencing a civil action in a High court in Nigeria namely:

1. By Writ of Summons
2. Originating Summons
3. By Originating Motion
4. By Each of these modes is dependent on the specific nature of cases.

Petition

**Writ of Summons**

## A Writ of Summons is a formal document addressed to the defendant requiring him to enter an appearance if he wishes to dispute the plaintiff’s claim. Civil actions involving substantial disputes of fact are commenced by way of a writ. These include, but are not limited to:

## Contract actions example claim for damages resulting from breach of contractual terms and obligations

## Tort actions example claim for damages in respect of property damage resulting from road accidents and negligence, Claim for damages resulting from fraud and defamation, etc.

* Personal Injury actions example claim for damages in respect of personal injury and / or death resulting from road and industrial accidents or negligence, etc;
* Intellectual property actions example claim for damages resulting from the infringement of copyright, trademark or patent, etc.
* Admiralty and Shipping actions.

A writ of summons when filed is sealed or stamped with the court’s name on it for service by a bailiff on the defendant. To give him notice of the claim, made against him and requiring him to acknowledge service and defend it, if he does not admit the claim. A statement of claim may be filed along with the writ, or later on within 14 days of the service of the writ of the defendant. In Lagos state, the writ of summons or originating process shall be accompanied by the statement of claim, list of witness, written statements, copies of every document to be relied on at trial, written address in support of the action, and so forth, otherwise, it will not be accepted for filing at the registry.

## Originating Summons

An action is commenced by way of an Originating Summons where it is required by statute or the dispute is concerned with matters of law in respect of which there is unlikely to be any substantial dispute of facts. Compared to a Writ of Summons, the Originating Summons is a simpler and swifter procedure for the resolution of disputes as it is determined generally on affidavits filed and does not involve pleadings or many interlocutory proceedings. However, many of the requirements concerning issuance, duration, renewal and service with regard to a writ may apply, with the necessary modifications, to an Originating Summons. It shall be prepared by the applicant or his Legal Practitioner, and shall be sealed and filed in the Registry, and when so sealed and filed shall be deemed to be issued.  An originating summons shall be accompanied by an affidavit setting out the facts relied upon, all the exhibits to be relied upon and a written address in support of the application. By virtue of **Order 3 Rule 8 of the High Court Of Lagos state (Civil Procedure) Rules 2004.**

## Originating motion

An Originating motion is used only when provided for by a statute or a rule of court. E*xamples* of actions to be commenced by this way are:   
a. Application for habeas corpus: This is a writ requiring a person under arrest to be brought before a judge or into court, especially to secure the person's release unless lawful grounds are shown   
b. Order for mandamus: This is a writ which commands an individual, organization (example government), administrative tribunal or court to perform a certain action, usually to correct a prior illegal action or a failure to act in the first place.  
c. Prohibition or certiorari: This is a [writ](https://en.wikipedia.org/wiki/Writ) directing a subordinate to stop doing something the law prohibits. This writ is often issued by a superior court to the lower court directing it not to proceed with a case which does not fall under its jurisdiction.  
d. Application for judicial review  
e. Action for the enforcement of fundamental rights under the Fundamental Rights Enforcement Procedure rules 2009  
  
 However, where a statute provides that action be commenced by application but does not specifically provide the procedure, originating motion should be use.

for their detention.

**Petition**

This is a written application made to court setting out a party case. This is only used where a statute or the rule of court provide for its use. Petition is used in matrimonial proceedings for divorce, or winding up of a company for its inability to pay its debts in the Federal High Court.

However, before commencing civil actions in a High Court, there are certain factors to be considered by the litigant which are the **Cause of Action; which is the** series of events or events that gave rise to a civil action and is founded in the relief or claim sought by the litigant, the **Jurisdiction of the court; that is if the court can entertain the subject matter, the limitation of Action; which is a** limitation period set for almost all actions that can be filed in court. For example, where the subject matter of a suit is a contract, the limitation period is six (6) years, action for recovery of land is 12 years etc, Alternative **Dispute Resolution (ADR); which deals with negotiation, conciliation, mediation and arbitration** must have been explored before proceeding to file an action in court and the **Rules of the Court.**

In conclusion, people institute civil cases in a High court in order to seek redress and get justice.

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